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CIVIL AND POLITICAL RIGHTS, INCLUDING QUESTIONS OF: DISAPPEARANCES AND SUMMARY EXECUTIONS

Report of the Working Group on Enforced or Involuntary Disappearances

Addendum

Report on the mission to Yemen

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Annex: Programme of the mission

Introduction

1. At the invitation of the Government of Yemen, two members of the Working Group on Enforced or Involuntary Disappearances visited that country from 17 to 21 August 1998.

2. Prior to that visit, the Working Group had been several times in contact with representatives of the Government of Yemen. In 1997, during the fifty-second session of the Working Group, they reiterated its willingness to cooperate with the Group. Accordingly, by note verbale dated 16 October 1997, the Government of Yemen invited the Working Group to visit Yemen.

3. At its fifty-fourth session in July 1998, the Chairman of the Working Group designated Mr. Jonas K.D. Foli (Ghana) and Mr. Manfred Nowak (Austria) to carry out the visit and suggested to the Government that the visit take place in the period 17 to 21 August 1998.

4. The purpose of the invitation was to study at first hand the pending cases of enforced disappearances which occurred as a result of a civil war in January 1986 in the former People's Democratic Republic of Yemen. However, in accordance with the terms of its mandate, the Working Group decided to consider any other information concerning enforced disappearances in Yemen, regardless of specific period or location.

5. In Yemen, the delegation was received by the Prime Minister, the Minister of Interior, the Minister for Legal and Parliamentarian Affairs, the Director of the Presidential Office, the Governor of Aden and the General Coordinator of the Supreme National Committee on Human Rights. The delegation also met with relatives of missing persons, with personalities and with representatives of non-governmental human rights organizations such as: the Yemeni Organization for Human Rights and Democratic Freedom, the 100 Committee to Combat Torture, the Forum for Civil Society, the National Women's Committee, the Human Rights Association, the Arab Democratic Institute, Amnesty International, the Yemen Centre to Help Victims of Violence and Torture. Finally, it endeavoured, within the short time available, to acquaint itself to the maximum extent possible with various aspects of the complex circumstances that lead to disappearances in Yemen. To that end, the delegation visited the city of Aden with a view to obtaining a comprehensive picture of the context, circumstances and particularities in which the cases of disappearances relating to the civil war of 1986 had occurred. The delegation was not able to meet with the President of the Republic and the Minister for Foreign Affairs, who were on official visit abroad, and with the Minister of Justice, with whom it had an appointment. The programme of the mission is contained in the annex.

6. The delegation wishes to express its appreciation for the valuable cooperation it received from the Government of Yemen, its national institutions and non-governmental organizations. All requests for meetings with officials were accepted and the delegation was able to carry out its mission to its entire satisfaction.

7. The delegation would also like to thank the United Nations Development Programme office for the excellent logistical and organizational support provided in connection with the mission.

I. HISTORICAL CONTEXT

8. The Republic of Yemen is situated in the south of the Arabian peninsula, bounded to the north by Saudi Arabia and to the east by Oman. The total area is around 527,000 sq km. The population is Arab, almost entirely Muslim, and was around 14.6 million according to the 1994 census.

9. After the fall of the Ottoman empire in 1918, North Yemen was ruled by imams. However, in 1962, the imamate was overthrown by the republican movement and the Yemen Arab Republic was proclaimed. The country was ruled by the only party, the General People's Congress (GPC). In 1978, Ali Abdullah Saleh was elected President by the GPC, after his predecessor's assassination. He has remained in office until now; the national elections held in 1997 gave the GPC a clear majority in parliament.

10. The events in northern Yemen ended British colonial rule in southern Yemen, and in 1967, the British were compelled to withdraw from Aden. The National Liberation Front, which took over the south, soon became radicalized, and the People's Democratic Republic of Yemen was proclaimed in 1970. The NLF became the Yemeni Socialist Party in 1979.

11. Since 1980, the People's Democratic Republic of Yemen has been led by Ali Nasser Muhammad. During his mandate, he improved relations with the West and the Arabian States to the north. However, his policies provoked criticism within the Yemeni Socialist Party. On 13 January 1986, a one-week civil war broke out, during which thousands of people were allegedly killed in street battles, and Ali Nasser Muhammad and his supporters subsequently fled to Sana'a. The fighting between the two factions of the Yemeni Socialist Party covered up a struggle for power between two groups of tribes. The first, which was defeated, was headed by Ali Nasser Muhammad and originated from the regions of Abyan, Shabnah and Aden. The second one, which remained in power in Aden, originated from Lahj and Yafa regions.

12. After the civil war, Ali Salem Al-Bid emerged as President. In March 1986, he proclaimed a general amnesty and invited supporters of Ali Nasser Muhammad to return from the Yemeni Arab Republic. However, the victorious faction allegedly handed over thousands of suspected supporters of the former President to the relatives of their supporters who had been killed in the fighting. Subsequently, those persons disappeared. They were allegedly executed and buried in mass graves around Aden.

13. On the basis of negotiations between the two countries which started in the mid-1980s, Ali Abdullah Saleh and Ali Saleh Al-Bid proclaimed, on 22 May 1990, the unification of the two Yemens and the foundation of the Republic of Yemen. However, the process of unification was fraught with difficulties. Indeed, many southerners considered that they were not treated as equal partners. A civil war between the north and south ensued in April 1994. The leaders of the Yemeni Socialist Party issued a proclamation of secession. During this civil war, the groups of tribes which were defeated

in 1986 and had fled to the north, joined forces with the north against their former opponents in the south. Finally, the secessionists were defeated in July 1994 and went into exile.

II. CASES OF DISAPPEARANCES PENDING IN THE WORKING GROUP'S FILES

A. Summary of cases received by the Working Group

14. Before the mission of the Working Group, 102 cases of enforced or involuntary disappearances were transmitted to the Government. Most cases refer to persons who allegedly disappeared between January and April 1986 in the context of the fighting which took place between the two factions of the Yemeni Socialist Party in the former People's Democratic Republic of Yemen (see paras. 11-12).

15. The majority belonged to the faction that was defeated in 1986. It included members of the air force, the army or the security forces, but some were civilians. Most of them were also members of the Yemeni Socialist Party. The forces said to be responsible for their arrest include personnel from the State security forces, the air force and the people's militia. They are said to belong to the victorious faction.

B. Meetings with government officials

16. Throughout its discussions with government officials, the delegation was told that the current Government of Yemen cannot be held responsible for acts which were committed prior to unification by a sovereign Government, i.e. the Government of the People's Democratic Republic of Yemen.

17. All government officials acknowledged that disappearances had occurred in the civil war of 1986 or thereafter. However, they stated that the issue was very sensitive and had been settled between the parties since the unification in 1990. Indeed, they declared that the negotiations for the unification of the two Yemens involved, on the one hand, the faction which had committed those acts in 1986 and, on the other hand, the Government of the Yemeni Arab Republic supported by the faction which suffered from them. For the purpose of unification and national reconciliation, the defeated faction decided to extend amnesty to the perpetrators of the crimes of 1986 and to become their partners within the Government of the newly founded State.

18. The government officials further stated that the missing persons were considered legally dead. They explained that civil registration in Yemen was less developed than in Western countries; there is no law concerning the civil status of a disappeared person. Articles 113 to 120 of Presidential Decree No. 20 of 1992 concerning civil status provide that a judge can consider a disappeared person as dead after a period of two years from the date of his disappearance if this disappearance occurs under exceptional circumstances and after a period of four years if the disappearance occurs in a "normal" period.

19. Government officials further stated that detention centres and prisons in the southern governorates had remained under the control of the former leaders of the former PDRY until 1994, when they were defeated in the civil war. It is only then that the governmental forces entered those prisons.

Subsequently, they were cleared; however, no prisoners whose detention was related to the events of 1986 were found and no trace of the whereabouts of the missing persons. Therefore, the Government considers that a thorough investigation has effectively been carried out, with negative results.

20. Furthermore, the authorities reported that in 1995 and 1996, they had found containers with decomposed bodies supposedly of those executed in the civil war of 1986. Witnesses living in the neighbourhood where those containers were found claimed that they had known about their existence, but had not spoken out fearing eventual retaliation.

21. With respect to the steps taken in order to solve the problem, the authorities stated that all the victims of the civil war of January 1986 were considered martyrs. Accordingly, their relatives were entitled to compensation consisting of a monthly payment of the salary of the martyr at the time of his disappearance for those who had been in public service or the payment of an average salary for those who were not civil servants.

22. The respective ministries in which the martyred persons used to work are responsible for the payment of the compensation. In cases where the person was not a State employee, the Ministry for Social Affairs is responsible for the payment of compensation to the relatives. In addition, the delegation was told that the Governorate Administration was providing humanitarian assistance to the relatives of martyrs such as clothing, scholarships, free medical treatment and medicine. The government officials stated that the allowance did not take into account the number of children or increases in the cost of living over the years.

23. With respect to the prosecution of the perpetrators of those crimes in 1986, the government officials stated that they were now in exile in the Syrian Arab Republic, Saudi Arabia and the United Kingdom because they had been defeated in the civil war of 1994 after having proclaimed a secessionist State. The authorities further stated that some of them had been tried in absentia for attempted secessionism and found guilty but had appealed. However, the charges on which they were tried were not related to the crimes committed in 1986.

24. A Supreme National Committee for Human Rights was established by Presidential Decree No. 10 of 1998. This interministerial body, headed by the Minister for Foreign Affairs, was established in order to handle human rights issues in Yemen. It also assumes responsibility for coordination and liaison with the Office of the United Nations High Commissioner for Human Rights. However, its General Coordinator stated that no database of the cases of disappearances exists. He further stated that until the visit of the delegation to Yemen, the Committee had not been in contact with the families of the missing persons.

25. Finally, the delegation met with the Prime Minister who agreed in principle to the recommendations of the delegation in relation to the clarification of the 101 unresolved cases of enforced or involuntary disappearances. These recommendations are described in the last part of the report.

C. Meetings with relatives of missing persons and non-governmental organizations

26. Bearing in mind its original mandate, which is to act as a channel of communication between the families and the Government concerned, the delegation met with relatives of missing persons as well as with numerous non-governmental organizations, both in Sana'a and Aden. The delegation sought to have an overall objective picture of the circumstances in which the disappearances occurred. It also sought to find out whether the principal interested parties, namely the families of the missing persons, were satisfied with the Government's policy with regard to the victims of the events of 1986.

27. With regard to the disappearances which occurred in 1986, the relatives of the missing persons as well as the NGOs took note of the Government's investigations and explanations. Although some demanded further investigations, nobody seemed to believe that any of the disappeared are still alive. They did not express a particular interest in bringing the perpetrators to justice. However, they expressed their desire for the Government to acknowledge officially that human rights violations were committed during the civil war of 1986. Many of them were of the opinion that relatives of the victims should be granted appropriate compensation.

28. Two families with many children informed the delegation that the compensation they were receiving, which was based on the salary of the missing person at the time of his disappearance, did not take into account either the actual needs of the families or the rise in the cost of living since 1986. They also pointed out that there was a discrepancy between the current salaries of civil servants and the monthly allowance of the families of the martyrs.

III. GENERAL ALLEGATIONS AND OTHER CASES OF ENFORCED DISAPPEARANCES

29. Throughout the mission, the delegation was informed that enforced disappearances had also occurred during other periods, and continue to occur. It also received from NGOs and relatives individual cases of enforced disappearances which allegedly took place in the country. These individual cases have been transmitted to the Government.

30. The human rights organizations told the delegation that disappearances had occurred in the former Yemen Arab Republic and the People's Democratic Republic of Yemen prior to and after 1986. In particular, they reported that many persons, mainly military personnel, disappeared during the civil war of 1994. Some of them had been released after the war, but the fate and whereabouts of others remain unknown.

31. In this connection, NGOs and individuals submitted to the Group, 74 individual cases of disappearances, 48 of which were admissible and transmitted to the Government. In nine cases, the persons concerned are said to have disappeared in the context of the civil war which took place from May to July 1994 between northerners and southerners. Most of them belonged to the army in the southern provinces of the Republic who, it is alleged, are being held by military intelligence in secret detention centres. In 10 cases,

the persons concerned are said to have disappeared in the former Yemen Arab Republic between 1976 and 1986. Most of the arrests were reportedly carried out by members of the National Security Organization. In 27 cases, the persons concerned are mainly military personnel and civil servants who disappeared in the former People's Democratic Republic of Yemen. The forces said to be responsible for the arrests belong mainly to the State Security and the Revolutionary Security Service (Amn Al-Thawra). One other case concerns a well-known politician who disappeared in 1978.

32. They further informed the delegation that since the end of the civil war in 1994, disappearances have continued to occur. Members of the security forces allegedly continue to arrest and detain citizens for various periods of time without charge or notification to their families. However, they acknowledged that most disappeared persons who were held in prolonged incommunicado detention for periods of up to one year were later released. The Political Security Organization, which is only accountable to the Presidential Office, was most frequently mentioned as the law enforcement agency responsible for these disappearances and lengthy incommunicado detentions. They reported that many places of detention were not officially recognized. They also stated that the large number of law enforcement agencies and uncertainty about their competence to discharge their duty made the task of finding missing persons more difficult. Finally, some human rights organizations reported that human rights activists were detained without warrant in lengthy incommunicado detention.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

33. The visit of the Working Group had two purposes. The first was to discuss the cases pending before it in order to reach a solution for their clarification. The mission was also meant to look into the question of disappearance in the country as a whole and to monitor compliance with the Declaration on the Protection of All Persons from Enforced Disappearance.

34. Throughout the mission, the delegation was able to get a comprehensive view of the context in which the disappearances occurred during the civil war of 1986. It is to be noted that those disappearances occurred in what used to be the People's Democratic Republic of Yemen. The context of those disappearances is complex. They result from the fighting between two factions of the Yemeni Socialist Party which reflected a struggle for power between two tribes. However, in 1990, the matter was settled between the clans in the unification process between the People's Democratic Republic of Yemen and the Yemen Arab Republic and the issue was considered settled by all parties.

35. After having met with all parties concerned, the delegation came to the conclusion that those missing persons were probably executed immediately after their arrest, as affirmed by the relatives of the missing persons and the human rights organizations. In addition, the delegation noted that there was no strong interest on the part of the families, and the civil society at large, for further investigations to be carried out.

36. The delegation is, however, concerned that the Government has never acknowledged publicly the human rights violations in general and disappearances in particular that occurred as a result of the January 1986 civil war and it cannot accept the denial by the present Government of their responsibility to clarify those cases.

37. The Working Group is also concerned that the Government did not carry out further investigations and did not take proper legal steps for the settlement and the clarification of the cases transmitted in the past by the Working Group. The Working Group regrets, for instance, that the Government did not respond on a case-by-case basis, but instead provided the Working Group with explanations of the context in which those disappearances had occurred. The delegation also regrets that the Government did not establish any contact with the families concerned before the Working Group visited Yemen. The delegation further regrets that the Government has not carried out investigations to locate the mass graves where the victims were buried and has not carried out forensic investigations to identify the bodies when they found containers with the remains of victims of the civil war of 1986.

38. The delegation is concerned that enforced disappearances allegedly occurred in the past, in particular during the civil war of 1994, and continue to occur. The delegation is gravely concerned about the underlying causes of enforced disappearances, in particular the impunity enjoyed by law enforcement officials, and the existence of unrecognized places of detention where people are held in incommunicado detention for long periods of time.

B. Recommendations

1. Clarification of the 1966 cases

39. It is recommended that the Government issue a public declaration in which it recognizes and regrets the events which led to the disappearance and death of hundreds of human beings. In this declaration, the Government should confirm to the families of disappeared persons from 1986 that it is willing to settle these cases in a legally binding manner. The declaration should be widely announced to the public through appropriate media channels and distributed to all families on the list of the United Nations Working Group on Enforced or Involuntary Disappearances.

40. It is recommended that the Government consider establishing a special Task Force of the Supreme National Committee on Human Rights for the purpose of settling the remaining legal issues in connection with the 1986 disappearances with all the families concerned. This Task Force should also include relevant NGOs. The Task Force should set up a database of all disappeared persons, their family members, any court decisions presuming the disappeared persons dead, any benefits and social allowances paid to the families in compensation for the disappearance. The Task Force should further develop procedures in order to take the necessary legal steps for the clarification of all cases, in particular legally valid decisions based on the presumption of death, and for the settlement of the remaining claims of the families. When dealing with compensation claims, the Task Force shall ensure that all families are treated equally. A fair compensation might consist of an equal lump sum for each disappeared person and of a monthly allowance which

takes into account the former position of the disappeared persons as well as the actual needs of the families. The final settlements with each family shall be laid down in a legally binding document, such as a binding court decision or a legally valid contract.

41. It is further recommended that the Government submit to the Working Group on Enforced or Involuntary Disappearances a first report on the implementation of these recommendations not later than 28 February 1999, in order to enable the Working Group to take all necessary steps for the clarification of the cases concerned. The final report should be submitted to the Working Group as soon as all cases have been settled with the families, but in any event not later than 31 October 1999.

2. Prevention of future disappearances

42. The Working Group wishes to recall that under article 3 of the Declaration on the Protection of All Persons from Enforced Disappearance of 18 December 1992, each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. In particular, the Government shall take the following specific measures on the basis of the Declaration:

(a) All acts of enforced disappearance, as defined in the preamble to the Declarations, shall be made offences under criminal law punishable by appropriate penalties, which shall take into account their extreme seriousness;

(b) The Government shall ensure that persons deprived of liberty shall only be held in officially recognized places of detention, which maintain official up-to-date registers of all detainees. In addition, the Government shall maintain an up-to-date official centralized register of all persons deprived of liberty in any territory under its jurisdiction (article 10 (1) and (3) of the Declaration). This shall also apply to persons deprived of liberty by tribal authorities;

(c) The Government shall ensure that nobody is detained incommunicado. Any person deprived of liberty shall be brought before a judicial authority promptly after detention. Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having interest in the information (article 10 (1) and (2) of the Declaration).

(d) The Government shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention. The Government shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials (article 12 of the Declaration). In this context, the Government shall take steps to reduce the number of different law enforcement bodies

operating in the country. The Government shall limit the detention powers of the Political Security Organization and subject it to the strictest supervision by courts and other monitoring bodies;

(e) The Government shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly, and impartially investigated by the authorities (article 13 (1)). Taking into account that the Supreme National Committee on Human Rights, because of its composition, cannot be considered as an independent body as required by this provision, the Government shall take steps to establish a truly independent national human rights institution with the power to decide on individual human rights complaints, including allegations on enforced disappearance, and to conduct independent investigations with the powers stipulated in article 13 of the Declaration;

(f) The Government shall ensure that all persons presumed responsible for acts of enforced disappearance are brought to justice in accordance with articles 14 to 18 of the Declaration.

43. It is recommended that the Government submit to the Working Group on Enforced or Involuntary Disappearances a first report on the implementation of the recommendations contained in the present report not later than 28 February 1999 and further reports as soon as progress has been achieved.

3. Technical assistance

44. Technical assistance provided by the United Nations High Commissioner for Human Rights to the Government of Yemen shall have a particular focus on assisting the Government in implementing the aforementioned recommendations of the United Nations Working Group on Enforced or Involuntary Disappearances. A United Nations expert shall be sent to Yemen for an initial period of one year in order to assist the Government in establishing a database on disappearances (see para. 40), in drafting a law on enforced disappearances (see paras. 42 and 42 (a)), in establishing a centralized register of all persons deprived of liberty (see para. 42 (b)), in reducing the numbers and powers of law enforcement bodies (see para. 42 (d)), in establishing a truly independent national human rights institution (see para. 42 (e)) and in carrying out other relevant tasks.

Annex

Programme of the mission

Monday, 17 August

Meeting with the Minister of Interior, Mr. Hussein Muhammad Arab

Meeting with the Director of the Presidential Office and Deputy Chairman of the Supreme National Committee for Human Rights, Mr. Ali Al-Anisi

Meeting with the General Coordinator of the Supreme National Committee for Human Rights, Mr. Khaled Ismail Al-Akwa'a

Meeting with member of Parliament, Mr. Taher Ali Seif

Meetings with NGO representatives: Yemeni Organization For Human Rights and Democratic Freedom; 100 Committee To Combat Torture; Forum For Civil Society; National Women's Committee; Human Rights Association

Tuesday, 18 August

Meeting with NGO representatives based in Aden: Amnesty International; Yemen Centre To Help Victims of Violence and Torture; Yemeni Organization For Human Rights And Democratic Freedom

Meetings with relatives of victims of enforced disappearance

Wednesday, 19 August

Meeting with the Governor of Aden, Mr. Taha Ahmed Ghanem, and the heads of security in Aden

Thursday, 20 August

Meeting with the Prime Minister, Mr. Al-Eryani

Meeting with the Minister for Legal and Parliamentarian Affairs, Mr. Abdullah Ahmed Ghanem

Meeting with NGO representatives: Arab Democratic Institute; Yemen Institute for Democratic Development

Friday, 21 August

Meeting with member of Parliament, Mr. Taher Ali Seif